FILED
SEP 27 2002
CLERK

(13)

No. 02-132

IN THE
Supreme Court of the United States

MOBIL CORPORATION AND HONEYWELL INTERNATIONAL INC.,
Petitioners,
v.
BRUCE W. ADKINS, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Appeals of West Virginia

SUPPLEMENTAL BRIEF FOR PETITIONERS

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September 27, 2002

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Pursuant to Supreme Court Rule 15.8, Petitioner Mobil makes this submission to alert the Court's attention to recent developments in the mass trial at issue in the above-captioned action. Specifically, the overwhelming majority of defendants subject to the mass trial at issue have settled their claims with the plaintiffs. Petitioner Honeywell has settled all of its claims; petitioner Mobil has not settled its claims, and still seeks this Court's review of the challenged decision on the grounds stated in the petition.

This development does not change the nature of the questions presented in this case. As the petition elaborates, the constitutional violation occurred the moment these cases were consolidated for trial without any inquiry into commonality and prejudice. The fact that many defendants have settled since then, rather than undergo this patently unfair mass trial proceeding, simply confirms the importance of that threshold inquiry. Indeed, petitioners anticipated in their petition that the court below's decision to dispense with any inquiry into commonality and prejudice would have the effect of coercing massive amounts of settlements, regardless of the merits of plaintiffs' claims. That has proven to be true.

In any event, any inquiry into commonality and prejudice would have important consequences on this case even today. There are still six defendants left in this mass trial, including Union Carbide; yet no court has inquired into the fairness of trying Union Carbide's liability as a premises owner and manufacturer together with petitioner Mobil's liability as a manufacturer.

Finally, there are still thousands of plaintiffs with claims against the remaining defendants, and defendants have been given no opportunity to challenge the application of West Virginia law to their claims. And, of course, West Virginia law will be applied throughout all of Phase One, despite the fact that thousands plaintiffs have no connection to that State.

Respectfully submitted,

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